tion to restoring the injured party to his situation had the property not been withheld.

SALES—STATUTE OF FRAUDS—CONTRACTS FOR WORK AND LABOR.—The plaintiff orally contracted to purchase from the defendant a quantity of shoes of a special pattern. The plaintiff was not a manufacturer, but procured the shoes to be manufactured by a third party. In an action for the price, *held,* the Statute of Frauds was a good defense. *Atlas Shoe Co.* v. *Rosenthal* (Mass. 1922) 136 N. E. 107.

Even in the absence of a special clause in the Statute, a sale of goods which are particularly designed and manufactured for the vendee will not be unenforceable by reason of the Statute of Frauds. *Bond* v. *Bourk* (1912) 54 Colo. 51, 129 Pac. 223. The theory of this rule is that such an agreement is primarily a contract for work and labor, and not for the sale of personalty. *In re Gies' Estate* (1910) 160 Mich. 502, 125 N. W. 420. Prior to the enactment of the Uniform Sales Act (N. Y. Pers. Prop. Law, § 85, 2), it was finally decided in New York, in accordance with the weight of authority elsewhere, that there was no distinction between articles especially manufactured by the vendor himself and articles procured by him to be manufactured by another party. *Morse* v. *Canasawacta Knitting Co.* (1912) 154 App. Div. 351, 139 N. Y. Supp. 634; *Forsyth & Ingram* v. *Mann Bros.* (1895) 68 Vt. 116, 34 Atl. 481; *contra, Smalley* v. *Hamblin* (1898) 170 Mass. 380, 49 N. E. 626. But the language of the Statute, "manufactured by the seller," was held too precise to admit of doubt and consequently a vendor who procured the goods to be especially manufactured by a third party was defeated by the Statute of Frauds. *Eagle Paper Box Co.* v. *Gatti-McQuade Co.* (1917) 99 Misc. 508, 164 N. Y. Supp. 201. The court was led to that conclusion by the feeling that the provision is generally regarded as incorporating the Massachusetts rule. It is true that Professor Williston, in drafting the Statute in question, sought to bring it into conformity with the Massachusetts rule laid down in *Mixer* v. *Howarth* (Mass. 1838) 21 Pick. 205 and *Goddard* v. *Binney* (1874) 115 Mass. 450. See *Eagle Paper Box Co.* v. *Gatti-McQuade Co., supra,* 512. But those leading cases merely enunciate the Massachusetts rule which is a guide to differentiating between sales and contracts to manufacture—*viz.,* that a contract for the sale of goods will come within the Statute only where the articles are then existing or are such as the vendor manufactures or procures in the ordinary course of his business—and by no means expresses the restrictive principle of *Smalley* v. *Hamblin, supra.* It would seem, then, that in the instant case the court misapprehended which Massachusetts rule was embodied in the Statute. The weight of authority elsewhere, supported as it is by the natural justice in protecting the intermediary vendor who orders the goods specially manufactured, would require a more liberal interpretation, *viz.,* that "maufactured by the seller" includes by implication the meaning "or procured to be manufactured by the seller."

STATUTORY CONSTRUCTION—STATUTE OF LIMITATIONS—EXTENDING OR REVIVING A CAUSE OF ACTION.—By act of incorporation a city's taxes were made a prior lien for ten years from the time of assessment. Fourteen years later this statute was amended, establishing a prior lien until payment. In an action for sale and distribution for failure to pay taxes, *held,* the amendment did not apply to a lien which had attached before the amendment took effect. *Erie County* v. *Lowenstein* (4th Dept. 1922) 202 App. Div. 579, 195 N. Y. Supp. 177.

By the weight of authority the running of a statute of limitations creates a vested right which the legislature cannot subsequently destroy by amendment or repeal. *Board of Education* v. *Blodgett* (1895) 155 Ill. 441, 40 N. E. 1025; *Eingartner* v. *Illinois Steel Co.* (1899) 103 Wis. 373, 79 N. W. 433; *contra, Campbell* v. *Holt* (1885) 115 U. S. 620; 6 Sup. Ct. 209. In New York there are con-

flicting *dicta*. See *Germania Savings Bank* v. *Suspension Bridge* (1899) 159 N. Y. 362, 368, 54 N. E. 35; *contra, Hulbert* v. *Clark* (1891) 128 N. Y. 295, 297, 28 N. E. 638. Liens attaching during the first four years of the operation of the original statute had expired by virtue of the ten year limitation when the amendment was passed and it would seem, therefore, that the legislature should not revive them. The question in regard to the liens not barred at the time of the amendment is one of extending and not of reviving a right of action. A statute of limitation upon a common law right is regarded by the courts as affecting merely the remedy, and is therefore capable of being altered without affecting the right. *Holcomb* v. *Tracy* (1858) 2 Minn. 241. But no lien for taxes exists except by statute. *O'Connell* v. *Sanford* (1912) 256 Ill. 62, 99 N. E. 885. And where a statute confers a right and at the same time limits the period over which it can be exercised, the right itself is restricted and not merely the remedy. *American R. R. of Porto Rico* v. *Coronas* (C. C. A. 1916) 230 Fed. 545. Since neither a statute nor an amendment is to be construed as retroactive unless the language clearly indicates that intent, *Benton* v. *Wickwire* (1873) 54 N. Y. 226, it follows that the present amendment should not apply to a right existing when the amendment was passed. Furthermore, if the statute were so construed the question of the constitutionality of a retroactive law would be raised. Since a court should never construe a statute so as to raise a constitutional question, if such construction can reasonably be avoided, *United States* v. *Delaware & Hudson Co.* (1909) 213 U. S. 366, 29 Sup. Ct. 527, it seems that the decision of the court in the instant case was correct.

TAXATION—TRANSFER TAX—ESTATES BY ENTIRETY—DEDUCTION OF DOWER.—The decedent and his wife held real estate as tenants by the entirety. New York Tax Law, §220 (7), provides that on the death of one of two tenants by the entirety, the right to immediate ownership is deemed a transfer taxable as though the whole property belonged absolutely to the deceased tenant and had been bequeathed to the surviving tenant. *Held,* that in assessing the transfer tax on the decedent's property, the value of the widow's dower must be deducted. *In re Dunn's Estate* (Surr. Ct. Bronx Co. 1922) 193 N. Y. Supp. 919.

At common law, a husband and wife holding an estate by the entirety were both seized of the whole and the survivor took not as a new acquisition but under the original grant. See *Jones et al* v. *W. A. Smith & Co.* (1908) 149 N. C. 318, 319, 62 S. E. 1092. Tenancy by the entirety is still recognized in New York. *Mardt* v. *Scharmach* (1909) 65 Misc. 124, 119 N. Y. Supp. 449. In an estate by the entirety there is no dower because the wife, if she survives, takes all. See *Roulston* v. *Hall* (1899) 66 Ark. 305, 307, 50 S. W. 690. But where the husband owns the whole property absolutely, the widow has an inchoate right of dower. New York Real Prop. Law, §190. A right of dower is not a transfer by will or intestacy and is therefore not subject to a transfer tax. *In re Weiler's Estate* (1910) 122 N. Y. Supp. 608; although the acceptance of a legacy in lieu of dower is a transfer by will and taxable. *Matter of Riemann* (1904) 42 Misc. 648, 87 N. Y. Supp. 731. Since the Statute provides that the tax on an estate by the entirety is to be computed as if the entire estate had belonged to the deceased and had been bequeathed to the survivor, an amount equivalent to what the dower right would have been worth in such case was properly deducted in the instant case.

TAXATION—TRANSFER TAX—JOINT BANK ACCOUNT.—Bank accounts stood in the joint names of the decedent and the petitioner, payable to either. All the money, when deposited, was the property of the survivor. *Held,* the accounts are not taxable under New York Tax Law, N. Y. Laws 1915, c. 664, § 220 (7) as amended